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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re the Marriage of SAMIR SOLIMAN  
AND NEVEEN TADROS.

SAMIR SOLIMAN,

Appellant,

v.

NEVEEN TADROS,

Respondent.

E030034

(Super.Ct.No. SBFL38445)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Kathleen Bryan,  
Temporary Judge. (Pursuant to Cal. Const., art. VI., § 21.) Affirmed.

Samir Soliman, in pro. per., for appellant.

Steven A. Becker for respondent.

Plaintiff and appellant Samir Soliman (husband) appeals the judgment in this  
action for dissolution of marriage. He raises several contentions concerning findings of  
the family law court and its division of property and debts. We find no error and we  
affirm.

## FACTS AND PROCEDURAL HISTORY

Defendant and respondent Neveen Tadros (wife) married husband in February of 1985. The parties were separated in March or April of 1998. Two children were born of the marriage. Custody and support are not at issue on appeal.

Husband is an engineer. Wife is a pediatrician. Both apparently emigrated to the United States from the Middle East. During the marriage, as wife testified and as the trial court found, husband controlled the couple's financial affairs "with an iron hand." Wife normally gave her paychecks to husband; he kept her on a meager monthly allowance of \$80. Wife testified that husband was physically abusive to her and compelled her to sign any documents he placed in front of her. If wife refused, husband would push her, pull her hair, yell at her and cut clothing from her body. The trial court specifically found that wife's testimony on these points was "consistent with husband's body language in court. While cross examining wife, he repeatedly was told to move back from the witness stand as he appeared to be intimidating."

According to wife, husband "had [his] own way of taking money, doing things with it. I had no control over it. I did not know what [husband was] doing. [Husband] had [his] own bank accounts under [his] name only that was hided [*sic*] completely from me. So whatever [he did], [he did], I don't know." The trial court found that husband had "essentially made all significant financial decisions without consulting wife. The exhibits are replete with unexplained transactions in the thousands of dollars. Some of

these transactions appear to have been fiscally unsound and speculative. Further, husband's credibility with respect to many of these issues is questionable at best."

Accordingly, in the division of the community property assets and debts, the court disbelieved much of husband's testimony that he had obtained loans from his brother for purchases of cars and real estate, and declined to charge the community for those alleged debts. Otherwise, the court divided the community property and assets in the judgment. Husband now appeals.

## ANALYSIS

### I. The Finding That Husband Breached His Fiduciary

#### Duty to Wife Does Not Require Reversal

The trial court made a finding below that husband had breached the fiduciary duty to wife imposed by Family Code section 721. Husband disputes this finding, and claims that the remaining issues were infected by it. We reject husband's contentions.

Family Code section 721 provides that a husband and a wife occupy confidential relationships with one another, and that each owes the other a "duty of highest good faith and fair dealing."<sup>1</sup>

Family Code section 721, subdivision (a) states that, "Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried."

Family Code section 721, subdivision (b) modifies subdivision (a): “Except as [otherwise] provided . . . , in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners . . . .”

Husband fastens onto the phrase, “in transactions between themselves,” and appears to argue that, because much of his questionable financial conduct ostensibly involved transactions with others (e.g., purported loans from his brother, loans to his brother, loans and investments to others), the court erred in finding a breach of his fiduciary duty to *wife* as a result of these dubious dealings.

Substantial evidence, however, rendered husband’s testimony about these purported transactions highly doubtful. The court was entitled to discredit husband’s testimony that such transactions had actually taken place. Husband controlled all the finances and wrote checks to cash, to himself, or to his relatives in the thousands upon thousands of dollars, all of which disappeared or were otherwise unexplained. Looting

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<sup>1</sup> Family Code section 721, subdivision (b).

the couple's bank accounts for substantial sums of money, without telling wife, counts as a "transaction" between husband and wife as to which a fiduciary duty is owed.

Family Code section 721, subdivision (b) prescribes some of the duties normally owed between fiduciaries, which are also expected as between husband and wife, "*including* the following:

"(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

"(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

"(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property."

Again, husband points to certain portions of the language, taken out of context, to circumscribe the fiduciary duty owed. For example, he emphasizes that he need only provide "access" to financial books and records, as described in subdivision (b)(1). He also suggests both that financial information need be shared only "upon request," and points out that he was under no obligation to keep detailed books and records of financial transactions, under subdivision (b)(2).

Husband fails to appreciate that Family Code section 721, subdivisions (b)(1), (2) and (3) are exemplary of the duties imposed, and not an exclusive or exhaustive list. Even if he was not required to keep formal books and records as in a business partnership, the evidence supports a finding that he breached his fiduciary duty to wife. He did his best to keep knowledge of his dealings and their financial interests from wife. He simply spirited away substantial sums of money. The trial was a mockery of accounting; husband was wholly unable to account for or trace the funds in question. Husband dissipated the benefits and profits of the parties' community property without wife's knowledge or consent, and could not account for these moneys. The finding that husband breached his fiduciary duty to wife was supported by more than ample evidence.

## II. Husband Is Not Entitled to Reimbursement of One-half a Purported Loan From His Brother to Purchase the Mercedes Automobile

We turn next to husband's substantive issues. At trial, husband claimed that his brother had lent the parties \$20,000, which they used as a down payment on a Mercedes automobile. He apparently claimed that the parties still owed this debt to his brother, and that the community should reimburse him for one-half of that debt. The trial court noted that husband was unable to adduce any evidence whatever of the existence of a loan between himself and his brother for those moneys. Although husband showed two \$10,000 deposits into the couple's bank account, there was no evidence showing the source of those deposits. Accordingly, the court denied husband's request for reimbursement.

The proper standard of review for the court's finding is substantial evidence. As husband notes, the court based its decision on its determination that husband "lacked credibility and could not prove the source of the funds." Exactly so. The court, as the trier of fact, was entitled to make such determinations of credibility, and did so adversely to husband. The evidence was more than sufficient to support the court's conclusion that no actual or legitimate debt to the brother existed, such that the community should reimburse husband.

### III. The Judgment Properly Divided the Anaheim and Loma Linda Real Properties

During the marriage, the parties purchased a condominium in Anaheim, and a residence in Loma Linda, among other properties. As to the Anaheim condominium, husband sought reimbursement for a purported \$80,000 loan from his brother. Husband claimed at trial that his brother had lent him the money to purchase the condominium. Unlike some of husband's other claims, this claim of loan was supported by the existence of a note and deed of trust, in the brother's favor, for \$80,000, signed by both husband and wife. As wife testified, however, husband compelled her to sign whatever documents he placed before her. Frequently, he would ask her to sign a document without showing her all the pages of the document, so that she would have no idea what she was signing. As to the note on the Anaheim condominium, wife testified that husband had told her that tenants renting the condominium were threatening a lawsuit, and that she needed to sign the paper he presented to her to defeat the lawsuit. She signed. The court's statement of decision noted that, "[a]gain, there is no canceled check

or other evidence that monies were actually given to husband, or whether the deed of trust was merely a ploy to prevent the lawsuit.” Accordingly, the court denied reimbursement of the purported loan, and ordered husband to hold wife harmless from enforcement of the deed of trust. While husband argues that wife “signed the deed of trust,” but that “[t]he reason she claimed she did so was not credible,” the court resolved the issues of credibility adversely to husband. We find nothing inherently incredible in wife’s testimony that husband coerced her to sign documents, many times without reading them, or that she signed the \$80,000 deed of trust for the reason husband told her: to wit, to defeat a potential lawsuit by the tenants.

Similarly, as to the Loma Linda residence, the court denied reimbursement for a purported \$20,000 loan from husband’s brother. Wife apparently signed a \$20,000 note, but there was no deed of trust securing the note, and the note was not recorded. Again, there was no corroborating evidence, such as a check from husband’s brother, to indicate any such loan had actually occurred.

In the absence of any documentary evidence to substantiate that husband’s brother actually lent any funds on either the Anaheim or Loma Linda properties, we see no reason to disturb the judgment. The court disbelieved husband and believed wife as to these issues. The court therefore properly awarded the properties without taking the discredited loans into account.



IV. Substantial Evidence Supports the Trial Court's Finding That the Three Challenged Bank Accounts Were Community Property Accounts

Husband raises separate contentions as to three of the couple's bank accounts; as to each, he claims the court erred in determining that the funds therein were community property. Two of the three challenged accounts were solely in husband's name; the third was in the name of husband and his brother, jointly. Wife testified, however, that she never agreed that any accounts in husband's sole name would thereby become his separate property. In addition, wife presented evidence to indicate that the moneys placed in such accounts were derived from community property earnings of the spouses, and not husband's pre-marriage earnings.

The trial court held that, "[w]hile generally the form of title gives rise to a rebuttable presumption of the status of property,"<sup>2</sup> that presumption does not always hold true where one spouse has used undue influence. The court further found that there was no evidence of any source of the funds in husband's accounts other than community property earnings. The "presumption" was thereby rebutted.

Wife raises the additional point that the presumption arising from the form of title may properly apply to real property, but it has little significance when applied to money, i.e., bank accounts. Family Code section 760 describes the basic presumption of community property law, that "all property, real or personal, wherever situated, acquired

by a married person during the marriage while domiciled in this state is community property.” “Thus, there is a general presumption that property acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source.”<sup>3</sup> Moneys earned during the marriage would not, obviously, be traceable to a separate property source. That a spouse may deposit his or her earnings into a solely owned bank account does not, ipso facto, transmute community property earnings into separate property. If wife is correct, then no showing of undue influence or fraud would be necessary to overcome the general title presumptions.

We agree with wife. As explained in *Haines, supra*, property is classified as community or separate, based upon several factors. The primary factor is the time of acquisition: when, in relation to the time of marriage, was the property acquired?<sup>4</sup> ““The status of property as community or separate is normally determined at the time of its acquisition.””<sup>5</sup> The *Haines* court explained, “This is particularly true because of the general presumption that property acquired during marriage by either husband or wife or

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<sup>2</sup> Citing *In re Marriage of Lucas* (1980) 27 Cal.3d 808, 814-815.

<sup>3</sup> *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 289-290.

<sup>4</sup> *In re Marriage of Haines, supra*, 33 Cal.App.4th 277, 291.

<sup>5</sup> *In re Marriage of Buol* (1985) 39 Cal.3d 751, 757.

both while domiciled in California is community property, except as otherwise provided by statute.”<sup>6</sup>

The presumption arising from form of title, however, arises only if the property cannot be characterized by resort to the time-of-acquisition or other community property rules: “Where property status *cannot otherwise be proved*, characterization is determined by applicable presumptions. One category of presumptions includes those presumptions arising from the form of title, such as the joint title form presumption codified in former Civil Code section 4800.1 (Fam. Code, § 2581), and the general common law presumption in favor of title, codified in section 662. Therefore, *absent a contrary statute, and unless* ownership interests are *otherwise established by sufficient proof*, record title is usually determinative of characterization.”<sup>7</sup>

The parties may change the time-of-acquisition presumption by agreement, such as transmutation. Specific rules govern transmutations, however. A transmutation after January 1, 1985, must be made in writing, and must contain an express acknowledgment by the spouse whose community property interest is adversely affected by the transmutation.<sup>8</sup> The unilateral placement of community funds into a bank account in the name of one spouse only, is insufficient to satisfy the requirements for a valid transmutation.

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<sup>6</sup> *In re Marriage of Haines, supra*, 33 Cal.App.4th 277, 291.

<sup>7</sup> *In re Marriage of Haines, supra*, 33 Cal.App.4th 277, 291, italics added.

We need not decide the point definitively, however, because, even if the form of title presumptions did apply to the bank accounts here, wife presented credible evidence of undue influence or fraud, so as to overcome the form of title presumption.<sup>9</sup> Substantial evidence supports the trial court's characterization of each of the disputed accounts as community property.

#### V. The Court Properly Divided the Gold Jewelry

Husband next complains that the court did not properly divide the gold jewelry. He argued at trial that wife had \$4,200 worth of gold jewelry kept in her safe deposit box at the bank. He claims the court erred in failing to find that wife possessed the gold jewelry and in failing to award husband his share.

Again, the issue was resolved adversely to husband on matters of credibility. In support of his claims, husband offered only some receipts in Arabic. He failed to have these receipts authenticated or translated into English for the hearing. Wife noted that the receipts, which purported to be dated three years apart, appeared to have been prepared contemporaneously with one another. More importantly, wife testified that the gold jewelry had been purchased for husband, that no gold jewelry was kept in the safe deposit box, that the gold jewelry was kept at the parties' residence for convenience, as they enjoyed wearing the jewelry, and that husband had been in the house alone for three days

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<sup>8</sup> Family Code section 852, subdivision (a).

after the parties separated. The court clearly believed wife and did not believe husband. The court's resolution of disputed credibility issues in favor of one party, rather than another, based upon the evidence was proper, and does not present any reason to reverse the judgment.

VI. The Court Properly Found There Was No Community Obligation to Husband's

Brother for \$150,000 for the Andrew Homes Investment

Just as husband claimed he had borrowed moneys from his brother to purchase the Mercedes automobile and for part of the down payment on some of the real property, he also claimed he had borrowed \$150,000 from his brother, which husband in turn invested in a friend's development project, known as Andrew Homes.

Husband did present documentation that he had invested \$150,000 with his friend, and that the investment had failed. As with all the other purported loans from husband's brother, however, husband was unable to show the source of the \$150,000. Husband pointed to two transfers of over \$70,000, and over \$80,000, respectively, from an overseas bank account. That account was held in the names of husband and his brother jointly, however. Thus, husband again had no proof that the brother was the source of the funds.

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<sup>9</sup> *In re Marriage of Haines, supra*, 33 Cal.App.4th 277, 301.

The court also pointed out that, even if husband had offered some proof that his brother had provided the funds, the mere existence of a transfer from the brother to husband did not necessarily support finding the existence of a community property debt: “It could have been a gift. It could have been money that you’ve had in your brother’s account. . . . [Y]ou and your brother have had joint accounts . . . .” In addition, “[h]e could be repaying you a loan that you made to him. I don’t know. And the problem is, you have the burden of proof.” Husband suggested that he could have the friend testify that he received the funds. As the court noted, “How does he know where the money came from, from your brother? He doesn’t have any information about that -- I mean, no personal knowledge.”

Significantly, the brother never testified, nor did he offer any documentary evidence to corroborate husband’s claims.

As with the other, similar, issues, husband bore the burden of proof. He had neither documentary nor testimonial corroboration, and the court disbelieved his version of events. As wife observed, it made little sense to borrow \$150,000, and to then turn around and lend the borrowed funds for such a speculative purpose. The substance of the transaction itself was questionable, and raised doubts about the legitimacy of husband’s claims.

The court properly denied husband credit for the purported \$150,000 loan.

## VII. The Equalization Payment Was Proper

Finally, husband disputes the propriety of the equalization payment he was ordered to make to wife. This contention is based upon his other contentions of error: “Had the lower court found favorably for [husband] on any of [t]he issues raised in this brief, the equalization payment would have been greatly” different.

We find no error in any of the court’s findings, however. The case presented a classic credibility contest. The trial court heard the parties and made its determinations based on its assessment of the parties’ relative credibility and the evidence presented. Husband has presented no reason to alter any of the court’s findings, or its judgment. Based upon the findings and the division of community property required thereby, the equalization payment was proper.

## DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to wife.

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/s/ Ward  
J.

We concur:

/s/ McKinster  
Acting P.J.

/s/ Richli  
J.